Supreme Court, U.S.
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No. : 05-217

In the

Supreme Court of the United States

DJM, LIMITED,

Petitioner,

-against-

ISLAND YACHTING MANAGEMENT, INC., *Formerly* ISLAND YACHTING CENTRE, INC.; ISLAND YACHTING CENTRE, LLC, WILL DITMER; AND IAN JARMAN

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOHN P. D'AMBROSIO
COUNSEL OF RECORD
D'AMBROSIO & D'AMBROSIO, P.C.
Attorneys for Petitioner
42 Main Street
Irvington, New York 10533
(914) 591-5400

DICK BAILEY SERVICE (212) 608-7666 (718) 522-4363 (516) 222-2470 (914) 682-0848 Fax: (718) 522-4024
1-800-531-2028

QUESTIONS PRESENTED

1. Where acts or omissions cause both direct and consequential damages, and where no claims are made for direct damages because they were previously voluntarily satisfied, are claims for consequential damages which are made, properly dismissible pursuant to FRCP 56, because the direct damages have been compensated for?

2. Under federal maritime law, is loss of use of a private pleasure boat a compensable item of damage?

LIST OF PARTIES

The parties to the proceeding are as shown in the caption:

Petitioner: DJM, Limited is a Delaware corporation. (no parent; no subsidiaries)

Respondents: Island Yachting Management, Inc., *Formerly* Island Yachting Centre, Inc.; Island Yachting Centre, LLC; Will Ditmer; and Ian Jarman, are Florida corporations, a Florida limited liability company & Florida residents.

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OPINION BELOW

The Order of the United States District Court for the Middle District of Florida entered March 23, 2004, granting Respondents summary judgment is unreported (1a). The Decision of the Eleventh Circuit, affirming without opinion, is unreported officially, but reported at 132 Fed. Appx. 246 (14a).

JURISDICTION

The judgment sought to be reviewed was entered on May 17, 2005 (17a).

This court's jurisdiction is invoked pursuant to 28 U.S.C. 1254 (l).

This Petition is timely filed within 90 days of the denial by the Eleventh Circuit on June 24, 2005 of Petitioner's Petition for a re-hearing (19a).

LAW INVOLVED

STATUTES

Uniform Commercial Code
Fla. Stat. 672.313. Express Warranties by affirmation, promise, description sample.

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain

creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

Fla. Stat. 672.314. Implied Warranty: merchantability: usage of trade.

(1) Unless excluded of modified (s. 672.316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

Fla. Stat. 672.315. Implied Warranty; fitness for particular purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Fla. Stat. 672.714. Buyer's damages for breach in regard to accepted goods.

(1) Where the buyer has accepted goods and given notification (s.672.607{3}) he or she may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is

reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

Fla. Stat. 672.715. Buyer's incidental and consequential damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expenses incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

Restatement II of Torts, Section 928